

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company	)	
	)	00-0259
Petition for expedited approval of	)	
implementation of a market-based	)	
alternative tariff, to become effective on	)	
or before May 1, 2000, pursuant to	)	
Article IX and Section 16-112 of the	)	
Public Utilities Act	)	
	)	(cons.)
Central Illinois Public Service Company	)	
Union Electric Company	)	
	)	00-0395
Petition for approval of revisions to	)	
market value tariff, Rider MV	)	
	)	
Illinois Power Company	)	
	)	00-0461
Proposed new rider MVI and	)	
revisions to rider TC.	)	

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**COMMONWEALTH EDISON COMPANY’S  
MOTION SEEKING PROTECTION OF CONFIDENTIAL  
AND PROPRIETARY DATA AND SANCTIONS**

Commonwealth Edison Company (“ComEd”), pursuant to 83 Ill. Adm. Code § 200.190, moves for protection of its Confidential and Confidential and Proprietary data and for sanctions against NewEnergy Midwest, L.L.C. (“NewEnergy”) for its disclosure of such data in violation of the Hearing Examiner’s decision to place such data under protective seal and its Confidentiality Agreement with ComEd. In support of this motion, ComEd states as follows:

1. On September 29, 2000 and October 3, 2000, NewEnergy attorneys Julie Hextell and David Fein signed the Agreement Regarding Protection of Confidential and

Proprietary Information Produced by ComEd (“Confidentiality Agreement”). This agreement provides, in part, that

No data, document or other information which is produced or designated as “Confidential” or “Confidential and Proprietary,” nor any information contained therein or obtained therefrom, shall be delivered, exhibited or disclosed to any person (other than Commission officers and employees governed by Section 5-108 of the Public Utilities Act) who has not read and signed this Agreement, and delivered the signed Agreement to ComEd.

(Confidentiality Agreement at 1). Moreover, with respect to a competitor of ComEd, the Confidentiality Agreement states that Confidential and Proprietary information shall only be disclosed to attorneys or consultants who have signed the Confidentiality Agreement. (*See id.*). Finally, if Confidential or Confidential and Proprietary is disclosed, the information “shall be sealed and served only on the Commission and the persons granted access to such information pursuant to this Agreement.” (*Id.* at 2).

2. Pursuant to this agreement, NewEnergy’s attorneys were permitted to receive Confidential and Confidential and Proprietary data from ComEd. Specifically, ComEd provided Confidential and Confidential and Proprietary data in response to two of NewEnergy’s data requests. NewEnergy read one of ComEd’s Confidential and Proprietary data request responses into the confidential portion of the transcript during the hearings (Tr. at 1021-25), which was then placed under seal by the Hearing Examiner and distributed solely to individuals who signed ComEd’s Confidentiality Agreement.

3. On January 12, 2001, NewEnergy filed a Brief on Exceptions that disclosed portions of ComEd’s Confidential and Confidential and Proprietary responses to NewEnergy. On page 10 of its Brief on Exceptions, NewEnergy disclosed a portion of ComEd’s response to NewEnergy’s first data request, dated September 12, 2000 (Revised), relating to

ComEd's involvement *vel non* in certain power transactions. Similarly, on page 14 of its Brief on Exceptions, NewEnergy disclosed a portion of ComEd's response to its third data request, dated September 12, 2000 (Revised), relating to ComEd's internal risk management methods and then relied on this disclosure in the brief. Thus, in its Brief on Exceptions, NewEnergy twice violated the Confidentiality Agreement by distributing Confidential and Confidential and Proprietary data—data that was placed under seal by the Hearing Examiner during the hearings—to individuals that did not sign ComEd's Confidentiality Agreement and placing such information on the Commission's website and in its files without Confidential or Confidential and Proprietary protection.

4. NewEnergy made no effort to conceal ComEd's Confidential and Confidential and Proprietary information from full disclosure. Accordingly, NewEnergy ignored the Hearing Examiner's decision to place such information under protective seal and is in breach of its Confidentiality Agreement with ComEd.

WHEREFORE, for all of the above reasons, ComEd respectfully requests that the Hearing Examiner:

(1) Strike NewEnergy's Brief on Exceptions, with leave for NewEnergy to refile its Brief on Exceptions in an appropriate format;

(2) Order that all copies of NewEnergy's Brief on Exceptions be returned to ComEd, or alternatively, that all parties sign a certification stating that such materials have been destroyed; and

(3) Grant any further or additional relief that the Commission deems appropriate.

Respectfully Submitted,

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One of the Attorneys for  
Commonwealth Edison Company

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Dated: January 25, 2001

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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**AFFIDAVIT IN VERIFICATION**

Courtney A. Rosen, being duly sworn on oath deposes and states as follows:

1. That she is one of the attorneys for Commonwealth Edison Company.
2. That she is familiar with the statements contained in the foregoing Motion

Seeking Protection of Confidential and Proprietary Data and Sanctions.

3. That the statements contained in said Motion are true and correct to the best of her information and belief.

FURTHER AFFIANT SAYETH NOT.

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Courtney A. Rosen

STATE OF ILLINOIS       :  
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COOK COUNTY             :  
                                  :  
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SUBSCRIBED AND SWORN TO before me, a Notary Public, this 25<sup>th</sup> day of  
January, 2001.

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**NOTICE OF FILING**

TO: SERVICE LIST

PLEASE TAKE NOTICE that on this date we have electronically filed with the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62706 Commonwealth Edison Company's Motion Seeking Protection of Confidential and Proprietary Data and Sanctions in the above captioned matter.

DATED this 25<sup>th</sup> day of January, 2001.

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**CERTIFICATE OF SERVICE**

I, Courtney A. Rosen, an attorney, certify that I caused copies of the attached Commonwealth Edison Company's Motion Seeking Protection of Confidential and Proprietary Data and Sanctions to be served on each of the interested parties by email and Federal Express, this 25<sup>th</sup> day of January, 2001.

\_\_\_\_\_  
Courtney A. Rosen

**Service List**  
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